

Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

CF

## Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

DEVAL L. PATRICK  
Governor

RICHARD K. SULLIVAN JR.  
Secretary

TIMOTHY P. MURRAY  
Lieutenant Governor

KENNETH L. KIMMELL  
Commissioner

COPY

June 22, 2011

Louis R. Gallo, President  
Gallo Construction Co., Inc.  
P.O. Box 443  
845 Sandwich Road  
Sagamore, Massachusetts 02561

RE: TAUNTON - BRP  
45 Cushman Street  
FMF# 290720  
**ADMINISTRATIVE CONSENT ORDER**  
**WITH PENALTY AND NOTICE OF**  
**NONCOMPLIANCE**  
**ACOP-SE-11-R003-1**

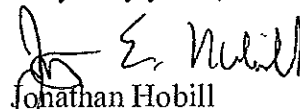
**THIS IS AN IMPORTANT NOTICE.  
FAILURE TO RESPOND TO THIS NOTICE  
MAY RESULT IN SERIOUS LEGAL CONSEQUENCES.**

Dear Mr. Gallo:

Enclosed please find a fully executed copy of an Administrative Consent Order with Penalty (ACOP) for the above referenced Site. The Effective Date for the Consent Order is June 22, 2011. The Consent Order has been assigned file number ACOP-SE-11-R003-1. Contained within the Consent Order are the measures and timelines required to achieve compliance with Massachusetts General Law Chapter 21.

If you have any comments and/or questions regarding this matter, please contact Cathy Kiley at the letterhead address or by calling (508) 946-2839.

Very truly yours,

  
Jonathan Hobill  
Deputy Regional Director  
Bureau of Resource Prevention

MCK/r  
React/TauntonGalloConstruction/TauntonGalloConstructionACOPexecutedcover

CERTIFIED MAIL NO. 7010 0780 0000 6737 9410

Enclosure: Administrative Consent Order with Penalty and Notice of Noncompliance  
ACOP-SE-11-R003-1

ec: (with enclosure)

City of Taunton, Mayor; [mayor@tmlp.net](mailto:mayor@tmlp.net)

City of Taunton, Board of Health; [cotboh7@tmlp.net](mailto:cotboh7@tmlp.net)

City of Taunton, Conservation Commission; [mrestino@tmlp.net](mailto:mrestino@tmlp.net)

cc: DEP-SERO (with Enclosure)

ATTN: Regional Enforcement

ec: (with Enclosure)

DEP-SERO

ATTN: Dan D'Hedouville, Senior Regional Counsel

Deneen Simpson

Laura Black, Data Manager

**COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of: )  
)  
)  
)

Gallo Construction Co., Inc. )  
Bourne, MA 02532 )  
)

File No.: ACOP-SE-11-R003-1

**ADMINISTRATIVE CONSENT ORDER WITH PENALTY  
AND  
NOTICE OF NONCOMPLIANCE**

**I. THE PARTIES**

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Southeast Regional Office at 20 Riverside Drive in Lakeville, Massachusetts 02347.
2. Gallo Construction Co., Inc. ("Respondent") is a Massachusetts corporation with its principal business office located at P.O. Box 443, 845 Sandwich Road, Bourne, MA, and a storage yard located at 45 Cushman Street, Taunton, MA, 02780 (the "Site").

**II. STATEMENT OF FACTS AND LAW**

3. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 21, §§ 26-53, and the Surface Water Discharge Permit Regulations at 314 CMR 3.00. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.
4. Respondent operates an active roadway salt storage facility at the Site.
5. The following facts and allegations have led MassDEP to issue this Consent Order:
  - A. On November 12, 2010, MassDEP was notified of the presence of deep blue-colored water in a drainage swale and an unnamed stream located adjacent to the Site. MassDEP assigned RTN 4-22979 and Respondent has been conducting

activities associated with an Immediate Response Action (IRA) Plan in accordance with the Massachusetts Contingency Plan (310 CMR 40.0000).

- B. On November 16, 2010, DEP inspected the facility. The salt pile was still in the process of being constructed and most of the pile was not covered. The salt pile encompassed most of the site and there were two drainage swales on either side of the pile. The edges of the drainage swales were caked with salt and water in the swales was blue colored. Stormwater runoff from the site flows through the two drainage swales to a channel at the southern end of the parcel. The stormwater runoff then flows via a culvert under the railroad tracks and to the unnamed stream and continues to a wetland; outflow from the wetland eventually discharges to the Taunton River.
- C. On November 17, 2010, Respondent's consultant collected surface water samples from the swale and the stream as part of the ongoing IRA activities. Elevated concentrations of total cyanide and free cyanide were detected in the samples. The concentrations of free cyanide at several locations exceeded the acute and chronic National Recommended Water Quality Criteria for the protection of freshwater aquatic life. The source of the blue color and the cyanide was determined to be the anti-caking agent sodium ferrocyanide, which is added to road salt at the processing site (out of state). The anti-caking agent was leached from the uncovered salt pile by rainfall into the swale and stream.
- D. At the request of MassDEP and as part of the IRA activities, in November 2010, Respondent ordered a new cover for the salt pile. The new cover was installed in mid-December. Subsequently, the salt pile was kept substantially covered until the pile was depleted in late February 2011.
- E. According to Respondent, when complete, the salt pile is approximately 4 acres in size. The salt pile sits on top of a base constructed from the crushed asphalt, brick and concrete from the former building that was demolished in 2008. MassDEP has not received documents/information to demonstrate that the pile is located on an impervious layer.
- F. In April 2011, Respondent began construction of a new salt pile. According to Respondent, their intention is to cover one-third of the salt pile at a time, as it is constructed, over the course of the construction time period, which is approximately four months.
- G. Based on these observations and a review MassDEP records, MassDEP has determined that the Respondent has violated the following regulations:

314 CMR 3.03 – No person shall discharge pollutants to surface water without a currently valid permit. Respondent does not have a permit to discharge to the surface water. Cyanide was discharged to the unnamed stream from stormwater runoff of the anti-caking agent from the uncovered salt pile.

### III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

6. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.
  7. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.
  8. Respondent shall perform the following actions:
    - A. **By July 1, 2011**, Respondent shall submit a NPDES Multi-Sector StormWater Discharge Permit to EPA, which includes a Stormwater Pollution Prevention Plan (SWPPP), and shall submit a copy to MassDEP. Respondent has indicated that as part of the IRA activities, the SWPPP shall include construction of drainage swales and a detention basin; and
    - B. **By September 1, 2011**, Respondent shall implement the SWPPP and prepare and implement Best Management Practices consisted with the MassDEP BRP Guideline DWSG 97-1 (refers to the Salt Institute's Salt Storage Handbook).
  9. Except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

Regional Environmental and Compliance Team (REACT)  
Department of Environmental Protection, Southeast Regional Office  
20 Riverside Drive  
Lakeville, MA 02347  
ATTN: Cathy Kiley
- Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.
10. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.
  11. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that the

deadlines set forth above constitute reasonable periods of time for Respondent to take the actions described.

12. Respondent shall pay to the Commonwealth the sum of three thousand seven hundred and thirty eight dollars (**\$3,738.00**) within thirty (30) days of the effective date of this Consent Order as a civil administrative penalty for the violations identified in Part II above.

13. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

14. This Consent Order may be modified only by written agreement of the parties hereto.

15. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

16. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

17. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

18. This Consent Order shall be binding upon Respondent and upon Respondent's successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's directors, officers, employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

19. In addition to the penalty set forth in this Consent Order (including any suspended penalty), if Respondent violates any provision of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of five hundred dollars (**\$500.00**) per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes

performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

20. Respondent shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, cashier's check, or money order made payable to the Commonwealth of Massachusetts. Respondent shall clearly print on the face of its payment Respondent's full name, the file number appearing on the first page of this Consent Order (ACOP-SE-11-R003-1), and the Respondent's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 3982  
Boston, Massachusetts 02241-3982

If payment is made by electronic funds transfer, Respondent must complete the attached form entitled "Request by Respondent for Electronic Funds Transfer" and, within 10 days of the effective date of this Consent Order, submit it to Ms. Valerie Walker via Facsimile at the MassDEP Revenue Fax Number 617-292-5624 or via mail to:

Ms. Valerie Walker, Director  
Department of Environmental Protection  
Division of Fiscal Management  
1 Winter Street, 4<sup>th</sup> Floor  
Boston, MA 02108

In the event Respondent fails to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, Respondent shall be liable to the Commonwealth for up to three (3) times the amount of the civil administrative penalty, together

with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, § 6C.

21. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.


22. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the Site for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

23. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

24. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

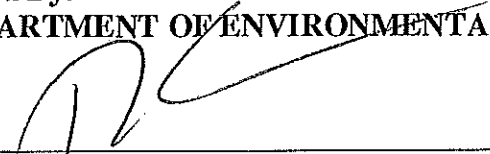
25. This Consent Order shall become effective on the date that it is executed by MassDEP.

**Consented To:**  
**GALLO CONSTRUCTION CO., INC.**

By:   
Louis R. Gallo  
President  
Federal Employer Identification No.: 042076094

Date: 6-20-2011

**Issued By:**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By:   
David Johnston, Regional Director  
SERO  
20 Riverside Drive, Lakeville 02347

Date: 6-22-11